

RESEARCH REPORT

Children's Rights to Effectively Participate in Justice Proceedings in a Language They Fully Understand

The East Asia and Pacific region

June 2023

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PARTICIPATE IN JUSTICE PROCEEDINGS IN
A LANGUAGE THEY FULLY UNDERSTAND**

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June 2023

Acknowledgement of contribution

This report was prepared for the Child Justice and Child Rights Division, UNICEF East Asia and Pacific Regional Office (**UNICEF EAPRO**) by King & Wood Mallesons.

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Purpose of report

This research report (Report) is focused on children's rights to effectively participate in justice proceedings in a language they fully understand, with a focus on the East Asia and Pacific region (Region). The Report summarizes the relevant international and regional legal standards applicable to these those rights.

In particular, it considers:

- (a) children's rights to access free of charge interpreter assistance in justice proceedings, especially for children from linguistic minorities and indigenous groups; and
- (b) related implications for children's access to justice.

References to justice proceedings throughout this Report include criminal, civil, administrative and care proceedings to reflect the variety of proceedings in which children come into conflict with the law or in which children's interests are decided.

Methodology and limitations

Research for this Report was based on:

- a desktop review of primary and secondary legal materials, academic literature, online articles;
- consultations with UNICEF EAPRO and UNICEF Timor-Leste;
- a structured focus group discussion, in line with the relevant ethical principles and standards, hosted by the UNICEF Timor-Leste Country Office on 10 August 2022 with seven members of the legal profession and two social workers from legal aid and a women and children's shelter in Timor-Leste, which the authors attended virtually; and
- a survey, administered in line with the relevant ethical principles and standards, distributed to 16 individuals working in the legal profession and in other services who work with children involved in justice proceedings (including the nine participants of the focus group discussion). Responses were analyzed for the purposes of this Report.

While this Report aims to be comprehensive, it is not exhaustive. It does not fully assess national level implementation across the Region of children's rights to realize effective participation in justice proceedings in a language they fully understand.

Other limitations in the preparation of this Report included challenges in securing authoritative translations of national legal sources, a lack of data on the availability of free of charge interpreters in justice proceedings across the Region and the inability to undertake in-country field research due to funding limitations.

Additional engagement with justice stakeholders, children's legal representatives and members of linguistic minorities and indigenous groups, as well as collation of field data and analysis of other national case studies in the Region (including analysis of key challenges and opportunities), would enhance the findings of this Report.

The authors acknowledge that children's access to justice is a much broader concept than children's involvement in legal proceedings (whether criminal, civil, administrative, care proceedings or otherwise).

The authors recommend further research to explore these matters and to build upon the findings of this Report.

Any such research should adopt a legal empowerment approach that focuses on supporting children's ability to use the law to assert, express and advance their rights.

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Abbreviations

ASEAN HRD	ASEAN Human Rights Declaration (2012)
CRC	Convention on the Rights of the Child (1989)
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities (2008)
ECHR	European Convention on Human Rights (1953)
ECtHR	European Court of Human Rights
GC10	General Comment No.10 of the Committee on the Rights of the Child
GC11	General Comment No.11 of the Committee on the Rights of the Child
GC12	General Comment No.12 of the Committee on the Rights of the Child
GC14	General Comment No.14 of the Committee on the Rights of the Child
GC24	General Comment No.24 of the Committee on the Rights of the Child
GC32	General Comment No.32 of the Human Rights Committee
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights (1976)
OHCHR	Office of the United Nations High Commissioner for Human Rights
Region	East Asia and the Pacific region
UDHR	Universal Declaration of Human Rights (1948)
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples (2007)
UNICEF	United Nations Children’s Fund
UNICEF EAPRO	United Nations Children’s Fund, East Asia and Pacific Regional Office

Foreword

Coming into contact with the justice system is a significant source of stress for anyone and can be a form of 'punishment' itself. This is even more true for children who need to be assisted by professionals throughout the process.

UNICEF works throughout the East Asia and Pacific region to save children's lives, defend their rights, and help them fulfil their potential. Our country offices manage and implement programmes supporting children's rights in 28 countries.

UNICEF, in line with its mandate, has been active in assisting countries across East Asia and Pacific in the development of child-friendly justice systems, including child-friendly interviewing spaces and courts, removal of intimidating legal attire and adaptation of proceedings, including to accommodate the needs of children with disabilities.

This report looks at the often underestimated and understudied issue of justice proceedings for children who cannot understand or speak the languages used in the court, such as ethnolinguistic minorities, indigenous groups, or migrants. In the language of the Sustainable Development Goals, these are among the children who are most left behind.

Against this backdrop, this report stimulates a valuable discussion on how to further empower children to realize and enjoy all their rights in the language they speak and understand, including by using modern technologies.

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Executive summary

Children face obstacles in accessing justice due to a broad variety of legal, practical, social and cultural reasons.¹ Children from linguistic minorities and indigenous groups are uniquely vulnerable to being deprived of access to justice, especially when unable to effectively participate in justice proceedings² in a language they fully understand.

This is a matter beyond child-sensitive or child-friendly language. Rather, it is an issue around the availability of laws, information on the law or justice proceedings and conducting justice proceedings in a language that a child speaks and understands.

Language is the foundation of every legal system. Policymakers use language to make laws, lawyers use language to advise and advocate for their clients, while judges use language to resolve disputes that hinge upon interpreting legal language. Accordingly, understanding the language used in a legal system is critical to effective participation in justice proceedings and to access to justice more broadly.

Access to justice becomes untenable if a child does not understand the language used by the legal system. Such children cannot communicate with their lawyers, comprehend their rights and allegations brought against them, or understand the proceedings and legal decisions that concern them.

This issue demands greater scrutiny, noting that indigenous children are disproportionately represented in criminal justice systems,³ linguistic minorities frequently face challenges in engaging with judicial authorities⁴ and given the lack of appropriately qualified interpreters across justice systems.⁵

International Legal Framework

There is no singular or separate right of the child to effectively participate in justice proceedings in a language they fully understand. However, the International Covenant on Civil and Political Rights establishes minimum guarantees to be afforded in full equality to a person defending a criminal charge, including: (i) to be informed of the nature and cause of the charge in a language that they understand,⁶ and (ii) to '*have the free assistance of an interpreter if [they] cannot understand or speak the language used in court*'.⁷

Likewise, the Convention on the Rights of the Child establishes that a child accused of a criminal offence is to be guaranteed the '*free assistance of an interpreter if the child cannot understand or speak the language used*'.⁸ This right to interpretative assistance is not limited to the court trial, as it is to be available '*at all stages of the process*' via interpreters who are '*trained to work with children*'.⁹

In non-criminal proceedings, the Committee on the Rights of the Child outlines that interpreter services should be available free of charge to indigenous children, to fulfil their right to be heard in any judicial proceedings affecting them.¹⁰ For other children, access to an interpreter may be necessary to fulfil a child's right to express its views fully in judicial proceedings affecting them,¹¹ and to have the child's best interests as a primary consideration in actions concerning children.¹²

Case Study: Timor-Leste

In Timor-Leste, Portuguese is the language used for legislation and the predominant language of the courts. Yet, Portuguese is the 'mother tongue' of only 0.1 per cent of the population with 30 dialects spoken in Timor-Leste.¹³ Nearly 40 per cent of the population does not speak, read nor write Portuguese.¹⁴ Most lawyers in Timor-Leste do not speak Portuguese.¹⁵ A survey administered for this Report across professionals working with children in the justice sector recorded that fewer than 6 per cent of respondents rated their ability to speak Portuguese as 'fluent'.¹⁶ Despite this, lawyers are often relied upon to informally interpret core rights and aspects of justice proceedings to children.¹⁷

The justice system in Timor-Leste has long experienced severe shortages of translators and interpreters,¹⁸ which has caused repeated difficulties in notifying individuals of legal proceedings, undertaking criminal investigations, and completing trials.¹⁹

The scope of this issue as it affects children from linguistic minorities and indigenous groups remains uncertain due to limited data. Accounts from across the legal profession in Timor-Leste indicate that local courts do not typically provide interpretation services for translation across local languages, including for child suspects to understand their rights, proceedings that involve them, or their sentences.²⁰

Broader outlook

The scope of this issue expands far beyond Timor-Leste. Multilingual societies are common across East Asia and the Pacific, where many countries have more than one official language²¹ and almost all have multiple languages and dialects.

Globally, it is estimated that the vast majority of indigenous peoples (70.5 per cent) live in the Asia and Pacific region.²² In Asia alone, there are more than 260 million indigenous people who speak 2,000 distinct languages.²³ The East Asia and Pacific region is also home to more than one-quarter of the world's children, numbering around 580 million.²⁴

In countries such as Malaysia and the Philippines, colonial languages remain dominant across the legal system, even when local populations speak other languages to a significantly greater degree.²⁵ Despite this, the United Nations Independent Expert on minority issues reported that globally: *'minorities have reported being denied the opportunity to be assisted, free of charge, by a translator or interpreter where they do not understand or speak the language of the tribunal or court'*.²⁶

Technology-based opportunities

Despite the existence of international obligations and national laws requiring free of charge interpreter assistance for children to effectively participate in justice proceedings in a language they fully understand, such laws are not always implemented or enforced in practice.

Technology-based solutions may provide cost-effective means to plug this gap and improve access to justice for children from linguistic minorities and indigenous groups. The case studies in Appendix 3 outline a variety of technology-based solutions that have been employed around the world to address the issue of access to justice for persons from linguistic minorities.

Global children's rights agendas have neglected the issue of children's rights to effectively participate in justice proceedings in a language they fully understand. The issue is central to children's effective access to justice, especially for children from linguistic minorities and indigenous groups. Further data and research are urgently needed to fully comprehend the scope of this issue, and its related implications for children's access to justice.

Recommendations

The following recommendations are informed by the analysis set out in this Report, including Appendix 2 (recommendations from inter-governmental organizations relevant to addressing children's right to effectively participate in justice proceedings in a language they fully understand) and Appendix 3 (case studies of technology-based solutions).²⁷



a) Recommendations for children

1. Learn about your legal system and your rights, including when you are entitled to have legal and interpreter assistance to understand what is happening in justice proceedings.



b) Recommendations for civil society organizations

1. Organizations with legal expertise can share child-friendly information in local languages on children's rights in justice proceedings, including rights to free of charge translation services. Such information can be shared in online formats, such as newsletters, videos or infographics on social media platforms.
2. Educate and train children, young people and their caregivers on children's legal rights, including the right to free of charge translation services if they do not fully understand the language used in justice proceedings.
3. Support children from linguistic minorities and indigenous groups involved in justice proceedings and advocate for translation support throughout proceedings, including pre-trial processes and detention.
4. Organizations that work with children and engage with the justice system can employ staff who speak local minority and indigenous languages, where appropriate, to support the availability of ad hoc translators.
5. Support capacity-building projects to develop legal vocabulary in local minority and indigenous languages to ensure such languages are capable of use in justice proceedings. Examples include projects to develop legal dictionaries in minority and indigenous languages, publishing legal materials in those languages, and using such languages in legal education and training.



c) Recommendations for lawyers

1. Understand the scope of children's rights to free of charge interpreter services across justice proceedings in the respective jurisdiction and inform clients of such rights.
2. Raise awareness through professional associations, such as bar associations, of children's rights to effectively participate in justice proceedings in a language they fully understand, including through free of charge interpreter assistance.

3. Advocate for the enforcement of relevant national and international laws that provide for children's right to free of charge interpretation services in the respective jurisdiction.
4. Collaborate on capacity-building projects to develop legal vocabulary in local minority and indigenous languages to ensure such languages are capable of use in justice proceedings. Examples include projects to develop legal dictionaries in minority and indigenous languages, publishing legal materials in those languages, and using such languages in legal education and training.



d) Recommendations for inter-governmental and international organizations

1. Organize local, national and regional education and awareness-raising campaigns on children's rights to participate in justice proceedings in a language they fully understand.
2. Develop practical guidance to inform and assist States on how to realize children's rights to effectively participate in justice proceedings, including through free of charge access to interpretation services.
3. Monitor and report publicly on the use of language in justice proceedings and the availability of free of charge interpreter services across the Region. This includes developing clear criteria and standards for monitoring the availability of interpreter services and progress.
4. Conduct field research and studies on how the availability of free of charge interpreter services for children from linguistic minorities and indigenous groups involved in justice proceedings impacts children's access to justice across the Region.
5. Partner with civil society organizations (for example, Tetun.org in Timor-Leste) to develop digital and other technology-based solutions to facilitate translation.
6. Engage with 'tech' companies to identify machine translation services or other digital technology-based solutions to support the translation of minority and indigenous languages into official languages used across the Region.
7. Convene States in regional forums to assess regional implementation of children's rights to effectively participate in justice proceedings in a language they fully understand. Use such forums to identify forms of regional collaboration, such as capacity-building projects, sharing regional best practice, awareness raising-campaigns across judicial and related fora as well as developing regional pools of translators.



e) Recommendations for States

1. Ensure implementation and enforcement of existing national laws that require access to free of charge interpreter services where a child does not fully understand the language used in justice proceedings.
2. Publish official translations of laws, especially legal instruments concerning children's rights and access to justice, in local minority and indigenous

languages. Ensure that draft laws (including laws distributed for consultation) are also translated into such languages.

3. Disseminate child-friendly guidance on children's rights to effectively participate in justice proceedings in a language they fully understand (including when free of charge interpreter services are available), to children of all backgrounds in languages and formats that are accessible to them (including digital formats). Ensure such guidance is readily available in all courts, mobile courts and related fora in which children may engage with justice proceedings.
4. Develop practical guidance to train justice system professionals on their role to implement and champion children's rights to effectively participate in justice proceedings in a language they fully understand. Such guidance or training should include when free of charge interpretation services are to be provided and how to engage with child participants in justice proceedings. Disseminate such guidance to relevant stakeholders such as judges, prosecutors, lawyers, police and support staff in courts and related fora.
5. Ensure that online court services are available in local minority and indigenous languages, including court forms, details regarding access to interpreter services, and key practicalities (such as location and opening hours).
6. Require courts to record and publicly report on the languages used by participants of justice proceedings and when free of charge interpretation services are provided.
7. Support educational institutions to develop and offer programmes that train interpreters to translate legal concepts into local minority or indigenous languages in a child-friendly manner.
8. Develop career pathways (for example, by subsidizing training fees or funding employment) for certified translators of minority and indigenous languages to work within the justice system, including in courts, police stations and detention centres.
9. Establish a State-supported centre and register of qualified interpreters for local indigenous and minority languages.
10. Allocate resources to fund access to technology-based solutions, such as:
 - Telephone or video conference translation services for local minority and indigenous languages. For example, a national interpreting service that provides access to interpreters via telephone²⁸
 - Social media accounts to disseminate child-friendly guidance in local languages on children's rights to effectively participate in justice proceedings in a language they fully understand (including when free of charge interpreter services are available)
 - Translating judgments into local minority and indigenous languages through machine translation, where available²⁹

- Telephone hotlines providing free of charge legal advice to children, young people and their caregivers in local minority and indigenous languages³⁰
 - Television, radio and online programmes delivered in local minority and indigenous languages on children's rights in justice proceedings.
11. Engage with 'tech' companies to identify machine translation services or other digital technology-based solutions to support the translation of minority and indigenous languages into official languages of the State.
 12. Ensure there are effective remedies for participants in justice proceedings who do not fully understand the language used. For example, a complaints system regarding the availability of interpretation services, and legal grounds to challenge decisions affected by the lack of interpretation or translation of insufficient quality.
 13. Establish legal standards and obligations for justice proceedings to be conducted in minority or indigenous languages, where appropriate. For example, where a number of participants speak that language, or where that language is requested by a child defendant.
 14. Where appropriate, establish appointment criteria for judges, public defenders, court, police and other personnel within the justice system to be proficient in minority and indigenous languages.

**HOW DOES LANGUAGE IMPACT CHILDREN'S
ACCESS TO JUSTICE AND EFFECTIVE
PARTICIPATION IN JUSTICE PROCEEDINGS?**



HOW DOES LANGUAGE IMPACT CHILDREN'S ACCESS TO JUSTICE AND EFFECTIVE PARTICIPATION IN JUSTICE PROCEEDINGS? 1

This section examines:

- the meaning of children's access to justice;
- the development of children's rights to realize effective participation in justice proceedings in a language they fully understand;
- the impact of language on children's access to justice and effective participation in justice proceedings.

1.1 WHAT IS CHILDREN'S ACCESS TO JUSTICE?

Access to justice refers to the measures needed to ensure that equality before the law is given practical effect.³¹

It is a fundamental element of the rule of law. The rule of law is the principle that *'the law applies to everyone, regardless of their position or status'*.³²

Access to justice is recognized in international legal instruments through protections such as rights to a fair trial,³³ rights to an effective remedy via a competent judicial body³⁴ and rights to be tried without undue delay.³⁵

The Office of the United Nations High Commissioner for Human Rights (OHCHR) recognizes access to justice as *'an essential prerequisite for the protection and promotion of all other human rights of children'*.³⁶

The United Nations Development Programme (UNDP) adopts a human rights-based approach and emphasises that access to justice *'must be defined in terms of ensuring that legal and judicial outcomes are just and equitable'*.³⁷ UNDP describes access to justice as *'the ability of people, particularly from poor and disadvantaged groups, to seek and obtain a remedy through formal and informal justice systems, in accordance with human rights principles and standards'*.³⁸

UNICEF defines access to justice in its Reimagine Justice for Children agenda,³⁹ as set out below.

'Access to justice is the ability to seek and obtain a just, equitable and timely remedy for violations of rights. It includes the right to be recognized before the law and to a fair trial, including equal access to courts and equality before the law.'

Children interact with the justice systems for many reasons – as victims or survivors, as witnesses, when accused of an offence, as an interested party, or because an intervention is needed for their care, protection, health, or well-being.

Children's access to justice covers all judicial and administrative proceedings affecting children, including customary and religious justice mechanisms, alternative dispute resolution and quasi-judicial mechanisms (e.g. national human rights institutions). It applies to constitutional, criminal, civil, public and private, administrative, and military law at the national and international levels.

*Access to justice requires the legal empowerment of every child and must consider their age, maturity, and evolving capacity.'*⁴⁰

UNICEF's definition of access to justice acknowledges that children are involved in justice proceedings in a variety of capacities.⁴¹

While this Report focuses specifically on children's effective participation in justice proceedings, it is widely acknowledged that the concept of access to justice extends further and is inherent to all rights.⁴² There are numerous matters beyond justice proceedings that have implications for children's access to justice, including the ability for children to:

- access laws and information about how the law applies to them;
- secure appropriate assistance to deal with a legal problem, including from a lawyer; and
- express an opinion about the law-making process and which laws are made.

1.2 WHAT IS CHILDREN'S EFFECTIVE PARTICIPATION IN JUSTICE PROCEEDINGS IN A LANGUAGE THEY FULLY UNDERSTAND?

Children's right to effectively participate in justice proceedings in a language they fully understand is not a standalone right in any treaty. The right is derived from existing treaty obligations⁴³ and subsequent interpretation by treaty bodies and regional human rights courts.⁴⁴

The right broadly concerns fulfilment of certain fair trial rights, by ensuring that a child can fully understand, and thus effectively participate in proceedings. Children's rights to effectively participate in justice proceedings in a language they fully understand has largely developed in the context of criminal proceedings, and is understood to extend to all stages of the juvenile justice process, including to the translation of core documents.

The UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (**Beijing Rules**) was the first international instrument to acknowledge the participation of children in the criminal justice process.⁴⁵ While a non-binding instrument, Rule 14.2 provides that for juvenile offenders:

'The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.'

Article 40 of the Convention on the Rights of the Child 1989 (**CRC**) later consolidated State obligations regarding children's rights in interactions with the criminal justice system.

The CRC does not refer expressly to a right to effective participation in criminal justice proceedings. However, Article 40(2)(b)(iv) provides certain guarantees around children's participation with respect to testimony and witnesses. Article 40(2)(b)(vi) requires States to ensure that children have access to a free of charge interpreter if they cannot understand or speak the language of the criminal justice proceedings.

'Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: ...

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ...

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; ...

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used...'

Subsequently, in General Comment No.10 (2007) (GC10) the Committee on the Rights of the Child (CRC Committee) extrapolated that these Article 40 provisions should be read as giving rise to a right to 'effective participation' in criminal justice proceedings, and provided guidance on the close connection to a child's right to understand the language used in proceedings:⁴⁶

- **Article 40(2)(b)(ii):** the CRC Committee explains that this provision on the right to be informed promptly and directly of charges, requires that every child '*should be informed in a language he/she understands*', which '*may require presentation of the information in a foreign language*'.⁴⁷
- **Article 40(2)(b)(iv):** the CRC Committee explains that under this provision, children possess a right to 'effective participation' in juvenile justice proceedings.⁴⁸ A fair trial requires that a child is '*able to effectively participate in the trial*'.⁴⁹

***'The right to effective participation in the proceedings
(art. 40 (2) (b) (iv))***

*46. A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.'*⁵⁰

- **Article 40(2)(b)(vi):** the CRC Committee explains that in respect of this CRC provision, children's right to a fair trial and effective participation may be undermined where a child does not fully understand the language used throughout the juvenile justice process:⁵¹

'Free assistance of an interpreter (art. 40 (2)[(b)](vi))

62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained

to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with "if", "if the child cannot understand or speak the language used", means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.'

The CRC Committee replaced GC10 with General Comment No.24 (2019) (GC24).⁵² In GC24, the CRC Committee provides further guidance on Article 40 of the CRC:

- **Article 40(2)(b)(iv):** the CRC Committee explains that this provision requires that a child must understand the case before it to effectively participate in the criminal justice process.⁵³ Where proceedings are not conducted in a language that the child fully understands, free of charge access to an interpreter may be required:⁵⁴

'Effective participation in the proceedings (art. 40 (2) (b) (iv)'

46. A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge...'

- **Article 40(2)(b)(vi):** the CRC Committee explains that this CRC right to free of charge interpreter assistance should be available 'at all stages of the process'⁵⁵ of juvenile justice proceedings and that '*interpreters should be trained to work with children*'.⁵⁶

Leading academic commentators Tobin and Read outline that these developments, amongst others, indicated that the availability of an interpreter at all stages of the juvenile justice process was integral to a child's effective participation in proceedings.⁵⁷ Further, that interpretive assistance should extend to the translation of the written evidence or official documents necessary for a fair trial, '*as anything less would deny the capacity of a child to participate effectively in proceedings*'.⁵⁸

The European Court of Human Rights (ECtHR) interprets the fair trial rights in Article 6(1) of the European Convention on Human Rights (ECHR)⁵⁹ as requiring children to be able to participate effectively in criminal proceedings against them.⁶⁰ In *T and V v United Kingdom*, the ECtHR found that active steps are required to promote a child's ability to understand and participate in proceedings,⁶¹ rather than allowing the proceedings to remain incomprehensible to that child.⁶² Leading academic commentators noted that this development required '*significant modifications be made to criminal proceedings to ensure that a child enjoys an effective right to a fair hearing*'.⁶³

In *SC v United Kingdom*, the ECtHR further found that for a child to effectively participate in proceedings, they must have 'a broad understanding of the nature of the trial process and of what is at stake for [them], including the significance of any penalty which may be imposed'.⁶⁴ For a child who does not understand the language of the proceedings, comprehension is not realistically attainable without access to an interpreter and translations of key documents.

Academic commentators Daly and Rap indicated that despite the development of progressive standards regarding children's participation in the criminal justice system, implementation remained outstanding:

*'... although these standards have achieved some improvements at domestic level, the more extensive modifications required for genuine participation of children in the justice system has not yet occurred.'*⁶⁵

1.3 LANGUAGE IS CRITICAL TO CHILDREN'S ACCESS TO JUSTICE AND EFFECTIVE PARTICIPATION IN JUSTICE PROCEEDINGS

It is well recognized that children face unique challenges in accessing justice due to a range of legal, practical, social and cultural obstacles. These range from a lack of legal standing, through to financial constraints, lack of awareness of their rights and how to secure assistance as well as fears of the justice system.⁶⁶

Such challenges are intensified when the law or legal proceedings are not expressed in a language that is fully understood by the child that is engaging with the justice system.

This is a matter beyond child-sensitive or child-friendly language. Rather, it is an issue around the availability of laws, or information on the law or legal proceedings, in a language that a child speaks and understands.

It is critical for a child to fully understand the language in which the law is expressed, and to fully comprehend the procedure of justice proceedings, in order to access justice and effectively participate. Language is the foundation of every legal system. Policymakers use language to make law, lawyers use language to advise and advocate for their clients, while judges use language to resolve disputes that hinge upon interpreting the language of the law.

It is a common complaint in all jurisdictions that the law is incomprehensible to people outside of the legal profession, due to the impenetrability of legal jargon and concepts. While such impenetrability can itself impede access to justice — where it impacts a child's ability to know, understand and express rights — a child who does not fully understand the language in which the law is expressed faces significantly greater hurdles to accessing justice, making the equality of arms an unachievable right.

For example, a UNICEF study focusing on Central and Eastern Europe and Central Asia identifies how linguistic constraints exacerbate the obstacles faced by children from linguistic minorities.⁶⁷

'[L]egal information is often not available in minority languages, and also that children, afraid of not being understood, avoid approaching institutions.'

'While conducting monitoring in a children's penitentiary establishment, we witnessed that ethnic minority children could not file a complaint (fill in the form) since they didn't know Georgian and the forms were in Georgian.'

'[A] representative of Montenegro's Police Directorate, who works on combating domestic violence and noted: "Websites do not provide a significant level of information in our language, not to mention minority languages."'

'Many Uzbek children, especially from mono-ethnic communities don't speak Kyrgyz or Russian at all although they understand some Kyrgyz. Only understanding Kyrgyz doesn't guarantee access to justice... Ethnic Uzbek children can express their opinions freely only in the Uzbek language. That is why they face a burden – if they become a victim or witness of a crime – during the investigation or in the social sphere.'

Similarly, children cannot effectively participate in justice proceedings if they do not fully understand the language in which proceedings are conducted. As outlined by Clooney and Webb:

'A defendant who cannot understand the case against [them] cannot have a fair trial. From the moment of learning of the charges against [them] until the moment of acquittal or conviction and sentencing, the defendant must be able to understand the proceedings and the consequences that [they face]. [Their] understanding affects other component fair trial rights, including [their] ability to prepare [their] defence, call and examine witnesses, and lodge an appeal.'⁶⁸

Globally, a significant number of children participate in justice proceedings or are otherwise in contact with the justice system. Conservative estimates by the Independent Expert leading the UN Global Study on Children Deprived of Liberty (**UN Global Study**) indicate that approximately 1.4 million children are held every year in police custody, pre-trial detention and prisons.⁶⁹ These statistics only consider children in detention. The number of children who otherwise participate in justice proceedings will be vastly greater. This is an area in need of greater research, as studies that measure the number of children in contact with the justice system or participating in justice proceedings are rare.

The UN Global Study does, however, identify that children who are '*largely overrepresented in detention and throughout judicial proceedings*' are from indigenous and migrant communities, as well as from ethnic minorities.⁷⁰ Such findings are reiterated by the CRC Committee, which has expressed particular concern regarding the disproportionate rates of incarceration of indigenous children,⁷¹ as well as the Independent Expert on Minority Issues, who finds that linguistic minorities face specific challenges in fully enjoying their rights when engaging with judicial bodies.⁷²

Children's effective participation in justice proceedings in a language they fully understand is a particular concern in the Region. The Region includes countries with some of the highest rates of linguistic diversity and indigenous languages in the world. For example, Asia is recognized as the continent with the most indigenous languages,⁷³ whereas Papua New Guinea is considered the most linguistically diverse country in the world with three official languages, around 839 indigenous languages,⁷⁴ and around 101 different languages spoken in Morobe province alone.⁷⁵

The Region also includes some of the highest global rates of children as a proportion of population. Countries such as Kiribati, Papua New Guinea, Samoa, the Solomon Islands, Timor-Leste, Tonga and Vanuatu record children under the age of 14 years as more than one-third of their respective populations.⁷⁶

**WHAT ARE THE RELEVANT STANDARDS
IN INTERNATIONAL LAW?**



WHAT ARE THE RELEVANT STANDARDS IN INTERNATIONAL LAW? 2

This section examines:

- the equality of arms principle; and
- which international legal instruments support children's rights to effectively participate in justice proceedings in a language they fully understand, including through access to a free of charge interpreter.

2.1 WHAT IS THE EQUALITY OF ARMS PRINCIPLE?

The principle of equality of arms applies between the parties to proceedings and derives from the right to a fair hearing and equality before courts and tribunals.⁷⁷ The principle requires that all parties to proceedings have a reasonable opportunity to present their case. If a party does not understand the language of proceedings or the language of the law, that party will necessarily be disadvantaged compared to an opponent (which may be the State in criminal proceedings) that is fully conversant in that language.

The CRC Committee defines the principle of equality of arms as the '*conditions of equality or parity between defence and prosecution*'.⁷⁸ The ECtHR refers to it as a principle that requires '*everyone who is a party to court proceedings shall have a reasonable opportunity of presenting [their] case to the court under conditions which do not place [them] at substantial disadvantage vis-à-vis [their] opponent*'.⁷⁹

The Human Rights Committee (HRC) explains in General Comment No.32 (GC32)⁸⁰ that the principle of equality of arms applies in *both* criminal and civil proceedings. Moreover, it means that an indigent person should have the free of charge assistance of an interpreter if they otherwise cannot participate in the proceedings on equal terms.⁸¹

In both criminal and civil proceedings, international treaty bodies, regional human rights courts and instruments indicate that the principle of equality of arms cannot be fulfilled where linguistic minorities are not provided interpretative assistance. For example:

- Equality of arms means that a party cannot be put in a disadvantaged position⁸² or '*position of imbalance*'⁸³ relative to their opponent. Such disadvantage and imbalance can exist if a party is unable to understand the language used in proceedings.

- Equality of arms requires that the parties have equal access to facilities for the preparation and presentation of a defence, including to records and documents relied on by a court.⁸⁴ Where such documents and records are not available in a language understood by a party, then that party's access to facilities is deprived of meaningful effect.

In the context of criminal proceedings, equality of arms is also applicable to:

- A right to legal assistance by counsel of one's choosing,⁸⁵ whereby '*communication with counsel might only be assured if a free interpreter is provided during the pre-trial and trial phase*'⁸⁶ for indigent defendants.
- A right to examine and cross-examine witnesses.⁸⁷ The CRC Committee observes that this right '*underscores that the principle of equality of arms...should be observed in the administration of juvenile justice.*'⁸⁸ The right is deprived of meaning if language barriers prevent a child from, for example, providing instructions to its lawyer in respect of witnesses and examination.

2.2 WHAT ARE THE RELEVANT INTERNATIONAL LEGAL INSTRUMENTS?

As mentioned, there is no distinct treaty provision that provides for children's rights to participate in justice proceedings in a language they fully understand.

However, the following international treaties provide different levels of support to the proposition that children, including those from linguistic minorities and indigenous groups, should be afforded access to an interpreter in justice proceedings, to enable their effective participation in justice proceedings:

1. International Covenant on Civil and Political Rights (**ICCPR**)⁸⁹
2. Convention on the Rights of the Child (**CRC**)⁹⁰
3. Convention on the Rights of Persons with Disabilities (**CRPD**).⁹¹

The following soft law instruments and guidelines also contribute to the broader understanding of best practice regional implementation of rights afforded to children for effective participation in justice proceedings in a language they fully understand:

1. Universal Declaration of Human Rights (**UDHR**)⁹²
2. United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**)⁹³
3. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (**Declaration on Minority Rights**)⁹⁴
4. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (**UN Principles and Guidelines**)⁹⁵
5. ASEAN Human Rights Declaration (**ASEAN HRD**).⁹⁶

The first list of instruments listed above comprise international treaties, which impose legally binding obligations upon State parties. If a State has a monist system, international treaty obligations will apply automatically in the national legal system once a State joins the relevant treaty (by signature, ratification or accession). If a State party has a dualist system, treaty provisions will not be enforceable within the State party until the treaty provisions have been legislated into national law.

The second list of instruments listed above comprise soft law declarations and guidelines adopted by the United Nations General Assembly. The term 'soft law' typically refers to norms, principles and procedures that are not legally binding, but constitute influential interpretation of binding obligations and guidance on best practice, which can influence the law.⁹⁷

Ultimately, at the level of international law, the protection available to a child involved in legal proceedings who does not fully understand the language used in court will largely depend upon a State's membership and implementation of the ICCPR and CRC.

Further details on each instrument are set out as follows. Appendix 1 provides a visual summary of the rights afforded by core instruments discussed as follows.

INTERNATIONAL TREATIES

a) International Covenant on Civil and Political Rights

The ICCPR is a legally binding multilateral treaty. As part of the International Bill of Rights, certain provisions of the International Bill of Rights arguably constitute customary international law.⁹⁸ While its provisions are not specific to children, they apply to children as well as adults.

The ICCPR recognizes rights that are generally relevant to access to justice, such as equality before courts and tribunals,⁹⁹ entitlement to '*a fair and public hearing*',¹⁰⁰ and that ICCPR rights should be afforded '*without distinction of any kind, such as... language*'.¹⁰¹

The ICCPR also enshrines '*minimum guarantees*' to be afforded '*in full equality*' to anyone defending a criminal charge,¹⁰² which are relevant to effective participation in justice proceedings in a language that can be understood.

These guarantees are contained in Article 14 of the ICCPR, which the HRC elaborates in GC32.¹⁰³ The guarantees include the following:

Article 14

'1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

(a) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*

(b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
[...]

(f) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
[...]

4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.'*

In GC32, the HRC outlines that:

- The right to the free of charge assistance of an interpreter (Article 14(3)(f)) arises at *'all stages of the oral proceedings'*, applies to *'aliens as well as nationals'* but may not be available where an accused understands the language *'sufficiently to defend themselves effectively'*.¹⁰⁴
- Rights afforded under Article 14(3)(b) are an *'important element of the guarantee of a fair trial and an application of the principle of equality of arms'* which might only be assured if *'a free interpreter is provided during the pre-trial and trial phase'*.¹⁰⁵
- The right to equality before courts and tribunals (Article 14(1)) guarantees *'equal access and equality of arms'* to avoid discrimination.¹⁰⁶ Further, this principle of equality extends beyond criminal proceedings and *'applies also to civil proceedings'*.¹⁰⁷ It can also exceptionally require that *'the free assistance of an interpreter be provided'* where *'an indigent party could not participate in the proceedings on equal terms'*.¹⁰⁸
- Rights afforded to children and juveniles (Article 14(4)) require that they enjoy *'at least the same guarantees and protection'* afforded to adults and should additionally enjoy *'special protection'*, such as the provision of *'appropriate assistance'* in criminal proceedings.¹⁰⁹ This language is arguably broad enough to include interpretative assistance.

b) Convention on the Rights of the Child

The CRC specifically recognizes the rights of children. The majority of countries in the Region are party to the CRC, with membership more widespread than of the ICCPR. Provisions of the CRC are binding as a matter of international law on State parties. Like the ICCPR, the CRC recognizes rights that are generally relevant to access to

justice (such as Articles 2, 3 and 12) and rights that are specifically relevant to effective participation in justice proceedings in a language that can be understood (mainly Article 40), which relate only to criminal proceedings.

The CRC Committee provides guidance on these rights through General Comments 10 (GC10), 11 (GC11), 12 (GC12), 14 (GC14) and 24 (GC24).¹¹⁰ GC24 sets out the CRC Committee's position on children's rights in the child justice system and replaces GC10.

These General Comments operate to reinforce the importance of using a language that children fully understand throughout justice systems and proceedings, to ensure that children can effectively participate.

CRC rights generally relevant to access to justice include:

- **Article 2(1):** which requires that CRC rights are afforded '*without discrimination of any kind, irrespective of the child's or [their] parent's or legal guardian's...language.*' In GC10, the Committee comments that States have to take '*all necessary measures*' to ensure all children are treated equally when in conflict with the law, paying '*particular attention*' to vulnerable groups, including linguistic minorities and indigenous children.¹¹¹ GC24 does not specifically acknowledge linguistic minorities, or address Article 2(1) in this manner.
- **Article 3(1):** provides that the '*best interests of the child shall be a primary consideration*' in '*all actions concerning children*', including actions undertaken by '*public or private social welfare institutions, courts of law, administrative authorities or legislative bodies*'.

In GC14, the CRC Committee underlines that children's best interests is a threefold concept: a substantive right, a fundamental interpretive legal principle, and a rule of procedure.¹¹² The CRC Committee explains that Article 3(1) requires States to provide '*appropriate information to children in a language they can understand*', to ensure that children can understand their Article 3(1) rights and to create the conditions for children to express their views and for their opinions to be given due weight.¹¹³

Leading academic commentators Eekelar and Tobin suggest that the language of Article 3 should be read broadly, with 'no limitations' on the application of the principle of '*best interests of the child*'.¹¹⁴ Accordingly, this principle arguably forms grounds to support that information provided in '*all actions concerning children*'¹¹⁵ should be communicated in a language that children can understand.

- **Article 12:** provides that children capable of forming their own views possess the right '*to express those views freely in all matters affecting [them]*',¹¹⁶ and for this purpose, children should be provided the chance '*to be heard in any judicial and administrative procedures affecting [them], either directly, or through a representative or an appropriate body*'.¹¹⁷

In GC12, the CRC Committee explains that States must make efforts to '*recognize the right to expression of views for minority, indigenous and...other children who do not speak the majority language*'.¹¹⁸ Further, a child's right to be heard in criminal

proceedings applies through ‘all stages’ of the judicial, adjudication and disposition process, as well as implementation of imposed measures.¹¹⁹ The CRC Committee further outlines that:

‘In order to effectively participate in the proceedings, every child must be informed promptly and directly about the charges against her or him in a language she or he understands, and also about the juvenile justice process and possible measures taken by the court. The proceedings should be conducted in an atmosphere enabling the child to participate and to express her/himself freely.’¹²⁰

In GC11, which specifically addresses the rights of indigenous children under the CRC, the CRC Committee emphasises that to fulfil Article 12:

‘...States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner.’¹²¹

- **Article 40:** this provision echoes the ‘minimum guarantees’ afforded by the ICCPR¹²² and strengthens the legal position of children in conflict with the law.¹²³ It enshrines rights that are particularly relevant to children’s effective participation in justice proceedings in a language that can be fully understood. Relevant elements of Article 40 are as follows:

Article 40

‘2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

[...]

b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

[...]

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

[...]

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

Critically, Article 40(2)(b)(vi) guarantees the right of children accused of a criminal offence to have the free of charge assistance of an interpreter where the child cannot understand or speak the language used in proceedings.

While several States expressed concern over this expression of 'free assistance' during the drafting of the CRC, the phrase was retained and States cannot now avoid this obligation on the basis of inadequate resources.¹²⁴

In GC24, the CRC Committee confirms that this right is not restricted to a court trial and should instead be available at all stages of the juvenile justice process.¹²⁵

The CRC Committee comments on the other relevant elements of Article 40 as follows:

- **Article 40(2)(b)(ii):** in GC24, the Committee emphasises that '*authorities should ensure that the child understands the charges, options and processes*',¹²⁶ as part of the guarantee to be promptly and directly informed of charges against them. Providing a child with documentation is insufficient; an '*oral explanation is necessary*'.¹²⁷
- **Article 40(2)(b)(iii):** in GC24, the Committee states that legal '*or other appropriate assistance*' should be provided to a child '*from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted*'.¹²⁸ The language '*other appropriate assistance*' arguably extends to interpretive assistance, where required.
- **Article 40(2)(b)(iv):** in GC24, the Committee outlines that for a child to effectively participate in juvenile justice proceedings, it '*needs to be supported by all practitioners to comprehend the charges and possible consequences and options*' to '*direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed*'.¹²⁹ To this end, proceedings '*should be conducted in a language the child fully understands or an interpreter is to be provided free of charge*'.¹³⁰

CASE STUDY: CONCLUDING OBSERVATIONS FOR THE PHILIPPINES¹³¹

The CRC Committee offers further guidance on full implementation of juvenile justice standards for indigenous children in its Concluding Observations on the Philippines.¹³² The Committee notes that to *'ensure that juvenile justice standards are fully implemented, in particular articles 37(b), 39 and 40'*¹³³ it recommends (among other measures) that the State party:

*'Adopt measures to ensure that an interpreter is provided free of charge in the case of indigenous children if required and that the child is guaranteed legal assistance, in a culturally sensitive manner, in accordance with the Committee's general comment No. 11(2009) on indigenous children and their rights under the Convention'*¹³⁴

The CRC Committee also urges that the Philippines take necessary steps to ensure that indigenous children and children belonging to minorities fully enjoy all of their human rights equally and without discrimination.¹³⁵

c) Convention on the Rights of Persons with Disabilities

Article 13(1) of the CRPD enshrines *'effective access to justice'* to persons (including children) with disabilities¹³⁶ on *'an equal basis with others'*.¹³⁷

This right extends to requiring States to provide *'procedural and age-appropriate accommodations'* to facilitate direct and indirect participation *'in all legal proceedings'* (i.e. not just criminal proceedings), including *'as witnesses'* and at *'investigative and other preliminary stages'*.¹³⁸

The Committee on the Rights of Persons with Disabilities has not issued interpretive guidance on this right. However, an ordinary reading of *'procedural and age-appropriate accommodation'* under Article 13(1) of the CRPD arguably extends to providing an interpreter or language support services where a child does not understand the language of proceedings. For example, interpreting into sign language.

OTHER INTERNATIONAL INSTRUMENTS

a) Universal Declaration of Human Rights

The UDHR was the first global expression by States of the fundamental human rights to be universally protected. While formally a non-binding instrument, the UDHR has informed numerous legally binding regional and global human rights treaties.

Relevantly, it expressly confirms that all people are entitled to the rights recognized in the UDHR *'without distinction of any kind, such as ...language.'*¹³⁹

The UDHR further recognizes that all people are:

- *'equal before the law'* and entitled to *'equal protection of the law'* without discrimination,¹⁴⁰
- entitled to *'the right to an effective remedy'* by competent national tribunals for any violations of rights granted by law; and¹⁴¹
- entitled *'in full equality'* to a *'fair and public hearing'* to determine their rights, obligations, and any criminal charge against them.¹⁴²

Read together, these rights can be interpreted to afford an individual (including a child), the right to a fair trial and to participate in legal proceedings to secure an effective remedy, in full equality and without discrimination on the basis of language.

b) United Nations Declaration on the Rights of Indigenous Peoples

The UNDRIP is the most comprehensive international instrument on the rights of indigenous peoples¹⁴³ and is relevant to the rights of children from indigenous groups.

While non-binding, Article 13(2) broadly recognizes that indigenous peoples should have access to an interpreter in legal proceedings to understand and be understood:

Article 1

'2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.'

The UNDRIP also recognizes that indigenous peoples:

- are *'equal'* to all other peoples and have the *'right to be free from any kind of discrimination'*, in the exercise of their rights,¹⁴⁴
- possess the right to *'participate in decision-making in matters which would affect their rights'*;¹⁴⁵ and
- should be consulted in respect of legislative or administrative measures that may affect them.¹⁴⁶

The UNDRIP also notes that *'particular attention'* should be paid to the *'rights and special needs'* of indigenous children in the implementation of the UNDRIP, and that States must *'take measures'* to ensure that indigenous children enjoy *'full protection and guarantees'* against *'all forms'* of discrimination.¹⁴⁷

c) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Declaration of Minority Rights concerns the obligations of States with respect to the rights of persons belonging to national or ethnic, religious and linguistic minorities.

Article 2(1) recognizes that persons using their own language should not be subject to discrimination, as follows:

Article 2

'1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to ... use their own language, in private and in public, freely and without interference or any form of discrimination.'

The Declaration on Minority Rights also recognizes that persons belonging to minorities have the right to:

- *'participate effectively in cultural, religious, social, economic and public life';*¹⁴⁸
- *'participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation';*¹⁴⁹ and
- *'no disadvantage'* should result from *'the exercise or non-exercise'* of the rights outlined in the Declaration on Minority Rights.¹⁵⁰

The Declaration on Minority Rights further provides that States *'shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law',*¹⁵¹ and that *'national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities'.¹⁵²*

d) UN Principles and Guidelines on Access to Legal Aid in the Criminal Justice System

The UN Principles and Guidelines is the first international instrument on the right to legal aid. It guides States on the principles on which a legal aid system should be based and the elements required to make that system effective and sustainable.¹⁵³

The UN Principles and Guidelines provide that States should ensure the *'provision of legal aid to all persons regardless of ... language',*¹⁵⁴ and that the best interests of the child should be the *'primary consideration'* in *'all legal aid decisions affecting children'.¹⁵⁵* Principle 11 outlines:

'Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, ageappropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.'

The UN Principles and Guidelines also provide guidance on measures to be taken by States, including:

- providing *'the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate'* for individuals detained, arrested, suspected, accused of or charged of a criminal offence;¹⁵⁶
- ensuring that statements or testimony of witnesses *'at all stages of the justice process'* are *'accurately interpreted and translated'*;¹⁵⁷
- ensuring *'special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system'*,¹⁵⁸ including:

'Providing information on legal rights in a manner appropriate for the child's age and maturity, in a language that the child can understand and in a manner that is gender- and culture-sensitive';

- providing certain information to children in a manner appropriate to their age and maturity.¹⁵⁹

e) ASEAN Human Rights Declaration¹⁶⁰

Unlike regions such as Africa, Europe or the Americas, Asian States have not adopted a regional human rights treaty that covers the Region in its entirety. Consequently, there is no associated treaty body, court or dispute resolution body that might enforce and set consistent standards for children's rights protection in the Region.¹⁶¹

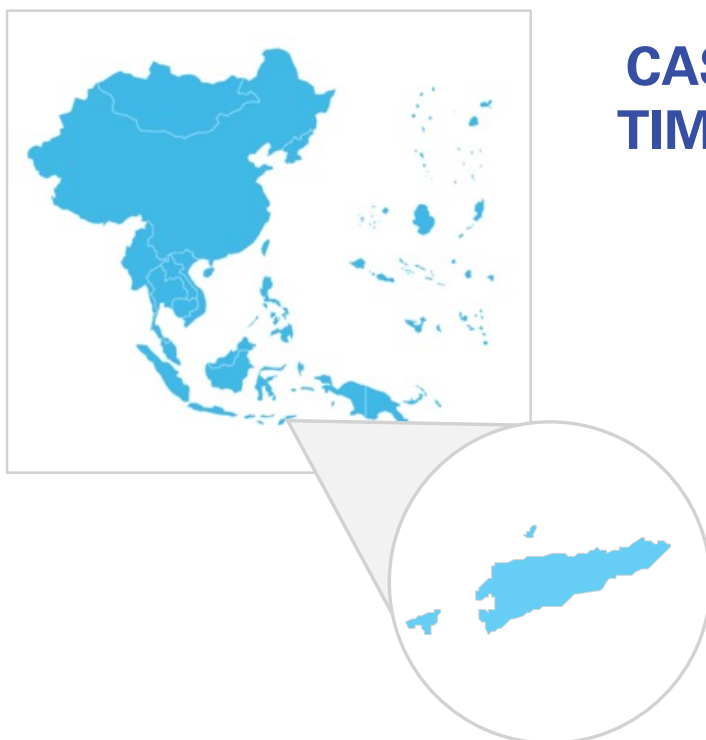
However, the non-binding ASEAN HRD is specific to ASEAN member States and outlines members' shared values with respect to human rights cooperation in the Region.

Broadly, the ASEAN HRD reaffirms the UDHR¹⁶² and expressly recognizes the right of individuals charged with a criminal offence to have a *'fair and public trial'*.¹⁶³

Like the UDHR, it also recognizes general protections that support access to justice, providing that ASEAN HRD rights should be afforded *'without distinction of any kind, such as ...language,'*¹⁶⁴ that every person *'is equal before the law'* and entitled to *'equal protection of the law'*.¹⁶⁵ The inalienable rights of children are specifically recognized.¹⁶⁶

CASE STUDY TIMOR-LESTE





CASE STUDY: TIMOR-LESTE

3

A COMPLEX LINGUISTIC ENVIRONMENT FOR THE LAW

- Timor-Leste has two official languages: Tetum and Portuguese.¹⁶⁷
- English and Indonesian are working languages in Timor-Leste.
- More than 36 languages and dialects are spoken in Timor-Leste, the majority of which are indigenous to Timor-Leste.¹⁶⁸
- Portuguese is the language used for legislation and the predominant language of the courts.
- Nearly 40 per cent of the population does not speak, read nor write Portuguese.¹⁶⁹
- Portuguese is the 'mother tongue' of only 0.1 per cent of the population.¹⁷⁰
- Historically, the majority of Timorese legal professionals were trained in Indonesia.¹⁷¹
- Most lawyers in Timor-Leste do not speak Portuguese¹⁷² and many judges are not fluent.¹⁷³
- Parliament is conducted in both Tetum and Portuguese.¹⁷⁴

3.1 BACKGROUND

The complex linguistic environment in Timor-Leste demonstrates how language barriers can exist at multiple stages of the justice process, from the drafting and implementation of laws through to prosecution and judgment. Appendix 4 of this Report summarizes some of the implications of such language barriers.

The justice system in Timor-Leste has long experienced severe shortages of translators and interpreters,¹⁷⁵ which has been documented as causing difficulties ranging from notifying individuals of legal proceedings, through to undertaking criminal investigations and completing trials.¹⁷⁶

The court system in Timor-Leste comprises four district courts and one appellate court.¹⁷⁷ The district courts sit in the districts of Dili, Baucau, Oecussi and Suai.¹⁷⁸ The Court of Appeals also sits in the capital, Dili.

Accounts from across the legal profession in Timor-Leste indicate that:¹⁷⁹

- where professional translation is available, it is usually only to and from official languages, such as between Portuguese and Tetum;¹⁸⁰
- courts typically do not provide translation across local languages and dialects: including for suspects to understand their rights, proceedings in which they are involved, or their sentence; and
- while Tetum is a national and official language in Timor-Leste,¹⁸¹ it has not historically been used in the development of the law and judicial system, which is largely based on that of Portugal.¹⁸² Consequently, complications arise when trying to translate Portuguese legal concepts into Tetum.

Data on the scope of these issues and how they affect children from linguistic minorities and indigenous groups remains limited.

3.2 SUMMARY OF TIMOR-LESTE'S LEGAL FRAMEWORK

Timor-Leste adopts a monist approach to international law. The Timor-Leste Constitution stipulates that:¹⁸³

'[r]ules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.'

Accordingly, international instruments ratified by the Timorese Government apply directly in the national legal system. Timor-Leste is a party to the following relevant treaties:¹⁸⁴

1. CRC
2. ICCPR
3. CRPD.

Regarding Timor-Leste's position in respect of other international instruments, mentioned in paragraph 38 of this report, it:

- supported adoption of the UNDRIP¹⁸⁵
- was admitted in-principle to ASEAN and is in the process of securing full membership.¹⁸⁶

At a national level, the Timor-Leste Constitution codifies the following provisions which are generally relevant to children's rights to effectively participate in justice proceedings in a language they fully understand:

- special protections for children, including against all form of '*discrimination*'.¹⁸⁷
- children shall '*enjoy all rights that are universally recognized, as well as all those that are enshrined in international conventions commonly ratified or approved by the State*'.¹⁸⁸ An Appeals Court decision has affirmed the same.¹⁸⁹
- guarantees in criminal proceedings, including the '*inviolable right of hearing and defence*' and rights to be assisted by a lawyer of choice.¹⁹⁰

The following national laws of Timor-Leste are particularly relevant:

1. The Código do Processo Penal (**Criminal Procedure Code**)¹⁹¹ outlines the procedure required for criminal proceedings in Timor-Leste. Critically, it requires:
 - all proceedings be performed in an official language of Timor-Leste: in Tetum or Portuguese;¹⁹²
 - the appointment of an interpreter when a person '*who does not either know or master an official language*' is to '*make a statement*';¹⁹³
 - the appointment of an interpreter to translate a document written in a language that is neither Tetum nor Portuguese;¹⁹⁴
 - the appointment of an interpreter for hearing-impaired or speaking-impaired persons who cannot read and/or write, who are required to make a statement,¹⁹⁵ and
 - an interpreter to assist a defendant subject to confirmation of a criminal sentence imposed by a foreign court, where that defendant is '*not familiar with the language used in the proceeding*'.¹⁹⁶
2. The Código Penal (**Penal Code**) criminalizes the provision of false translation or interpretation before a court or competent official.¹⁹⁷
3. The Código do Processo Civil (**Civil Procedure Code**)¹⁹⁸ outlines the procedure required in civil proceedings in Timor-Leste. It requires:
 - all judicial acts to be performed in an official language of Timor-Leste: in Tetum or Portuguese;¹⁹⁹
 - the appointment of an interpreter when a person who does not know an official language needs to be heard;²⁰⁰ and
 - that the court can order a party to provide a translation of documents submitted in a foreign language '*that require translation*', including at the request of one of the parties.²⁰¹

3.3 FEEDBACK FROM THE LEGAL PROFESSION IN TIMOR-LESTE

a) Focus Group

In August 2022, the UNICEF Timor-Leste Country Office hosted a focus group in Dili (Focus Group) to inform this Report.

The Focus Group included participants from the Office of General Prosecutor, lawyers from the private sector, legal personnel from legal assistance organizations and children's support services, and representatives of civil society organizations. Participants were largely selected for their experience in legal proceedings involving children and focused their discussions on the following topics:

1. children's practical access to justice proceedings in Timor-Leste;
2. challenges for children from linguistic minorities and indigenous groups;
3. best practice, tools and mechanisms (including access to interpreters) available to assist children with accessing justice proceedings in a language they fully understand; and
4. gaps and solutions for effective participation by children from linguistic minorities and indigenous groups.

Key feedback from the Focus Group participants is set out on the next page.²⁰²

FOCUS GROUP FEEDBACK: CHILDREN'S PRACTICAL ACCESS TO JUSTICE PROCEEDINGS IN TIMOR-LESTE

- It often falls to lawyers to explain to children accused of a crime what their rights are when they are apprehended, including the right to a defence, what is happening in proceedings, and to explain the alleged crime.
- While there is an entitlement to legal representation, a lawyer cannot be present with a child in detention. A lawyer may only have contact with a child defendant shortly before a hearing commences.
- Translation services are often available in court hearings, but generally only in the official languages of Tetum and Portuguese.
- Participants estimated there was typically a 30-40 per cent chance that interpretation services would be available at any stage of criminal proceedings (from initial apprehension through to hearing and final judgment).
- In regional courts such as in Baucau district, people often had difficulty understanding Tetum as well as Portuguese, given the wider use and understanding of regional dialects. This is a challenge both in court and at the stages of investigation and apprehension.

- Members of the police may understand regional dialects and are often relied upon to interpret. However, there are no official qualified police interpreters.
- There are risks associated with relying upon police staff for translation when the legal representative does not understand the language, as it is not possible to confirm that the translation is accurate. Participants suggested that it would be better to employ a professional interpreter for local languages.
- Parents and children's family members are frequently relied upon to ensure that a child understands justice proceedings and interactions with the police – both in respect of understanding the language used and the terminology.
- Where public servants and court officers can speak a dialect from the local municipality, they are informally relied upon to help people in court to understand procedures and proceedings.
- Participants suggested that courts should employ local people to assist with translation into local languages.
- These solutions are ad hoc and do not involve qualified translators. Participants stressed that interpretation required more than the literal translation of words, as the meaning of legal concepts should be accurately conveyed.
- Translation issues also arise in relation to documents that form part of a case, including evidentiary documents such as autopsy reports. Such documents are typically not translated.
- It is often left to lawyers to explain the content of such documents to the person involved in proceedings, which is ordinarily only done orally. Participants indicated that defendants may deny such evidence as a matter of course, on the basis that there was no translation.
- Courts typically engage an interpreter only where a foreign offender or victim is involved.
- Traditional justice forums such as *nahe biti bo'ot* and *tara bandu* are important, as participants can engage in proceedings in their own dialects.
- A 'mobile court' provides opportunities to engage in justice proceedings in local languages, although not all dialects are catered for.
- The laws of Timor-Leste are not published in the multitude of languages and dialects used across the country.

- Participants understood that Timorese law does not recognize children's right to participate in justice proceedings in a language they fully understand.
- There are presently no relevant technology services to support translation in Timor-Leste. Participants explained that Tetum was not available on Google Translate, let alone regional languages or dialects (see 3.5 for details of a related opportunity).

b) Survey

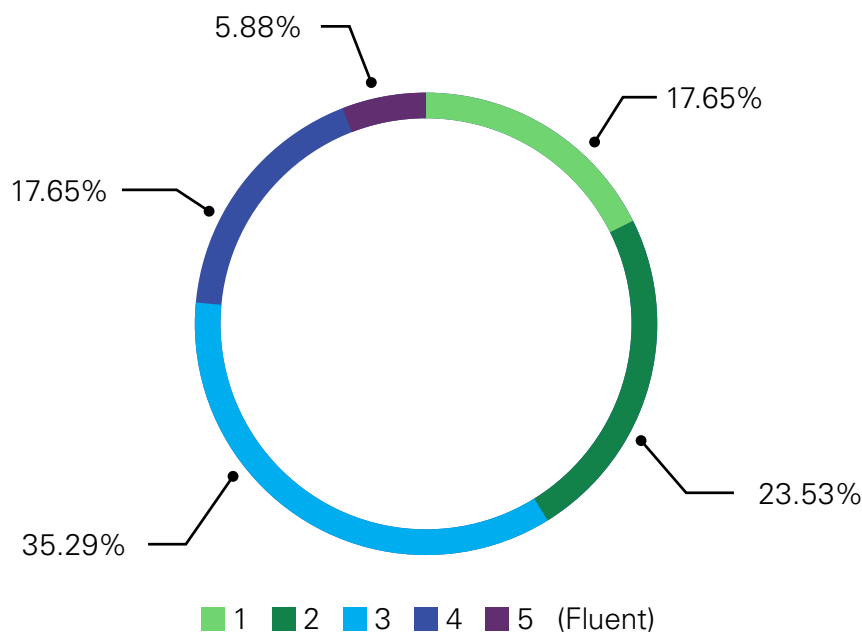
In August 2022, the UNICEF Timor-Leste Country Office conducted a survey of 17 people from the legal profession in services supporting children's engagement with the justice system (Survey).

Of those respondents, six were certified lawyers, of whom three were required to retrain in Portuguese language after qualifying in law to meet the requirement that proceedings are conducted in Portuguese.

When asked about their own understanding of Portuguese, of the 17 respondents to the Survey:

- only one respondent (5.88 per cent) rated its ability to speak Portuguese as five, on a scale of one (basic) to five (fluent); and
- 13 respondents (76.47 per cent) rated their ability to speak Portuguese as three or less, on the same scale.

Figure 1: Participants' fluency in speaking Portuguese



The Survey respondents rated themselves as most proficient in speaking the languages of Tetum (93.75 per cent of responses) and Indonesian (76.47 per cent of responses).²⁰³

Figure 2: Participants' fluency in speaking Tetum

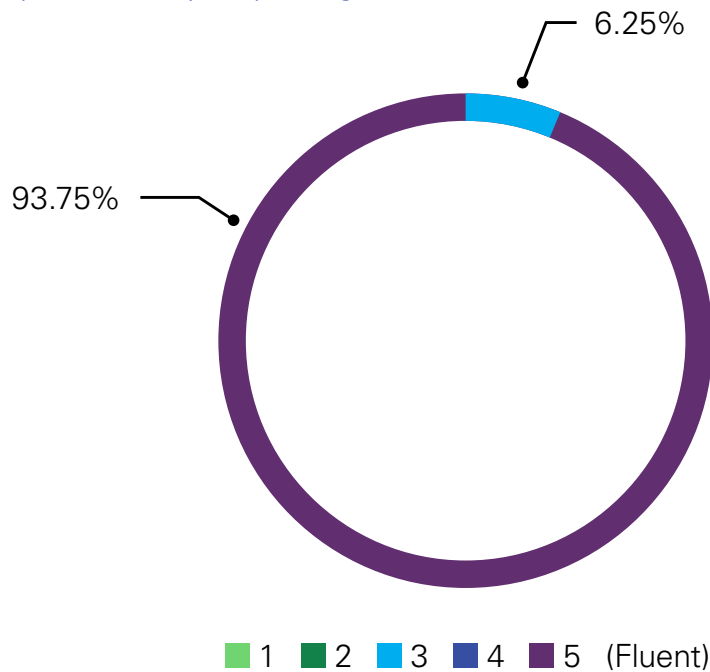
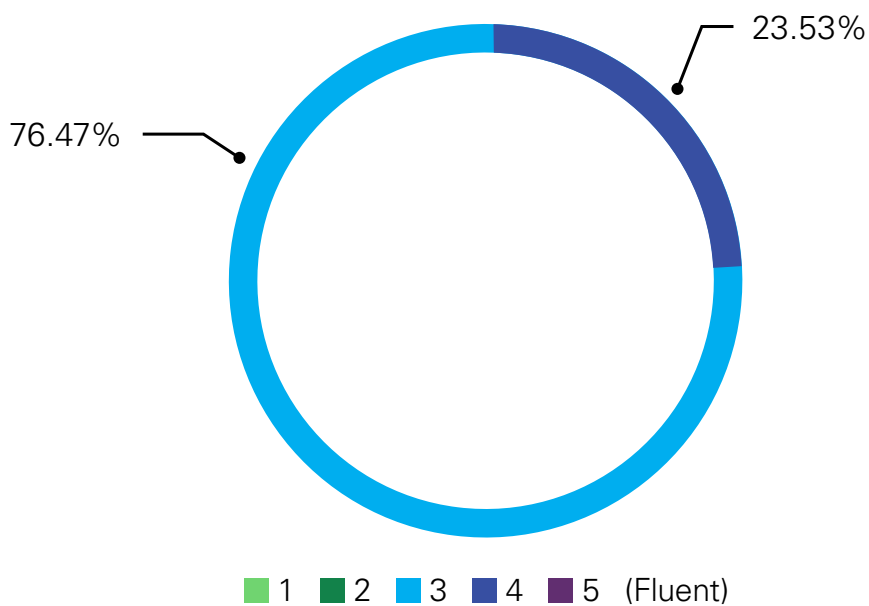
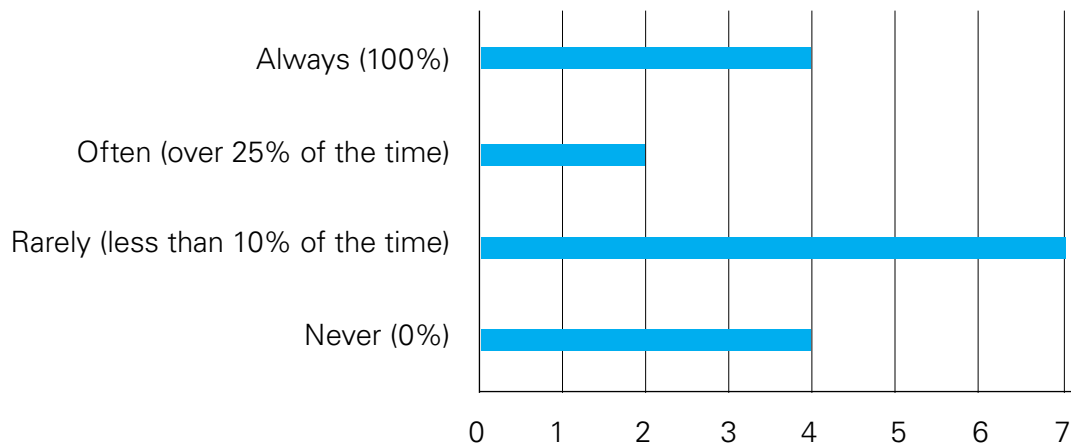


Figure 3: Participants' fluency in speaking Indonesian



Respondents were also asked about how often they dealt with clients who spoke a different language to the respondent. Two respondents indicated that this occurred more than 25 per cent of the time, while four respondents reported that they always dealt with clients who spoke a different language.

Figure 4: How frequently participants deal with clients who speak a different language



Five respondents (29.41 per cent) indicated they were not aware of available interpretation services in the courts, tribunals, or other justice mechanisms that they interacted with. There was mixed reporting as to whether such services were provided free of charge.

Almost all respondents (14 or 82.35 per cent) reported they had experienced circumstances where a person from a linguistic minority had difficulty understanding legal processes.

Respondents reported that it was a particularly common that people did not understand:

- the law that applies to them (nine respondents);
- how to protect their rights under the law (11 respondents);
- how to engage with court procedures (eight respondents); and
- what is occurring in a court or other hearing (six respondents).

Almost all respondents to the Survey (94 per cent) indicated their interest in using digital translation services as part of their work in courts, tribunals or other justice mechanisms.

3.4 CHALLENGES AND LIMITATIONS

The situation in Timor-Leste, described above, illustrates the difficulties that multilingual societies can face in ensuring equitable access to justice for children. Despite the existence of international obligations and national laws requiring interpreter assistance in civil and criminal proceedings, this is not always made available or enforced in practice.

Reliance on lawyers, police or staff members, who are not qualified interpreters, to translate and explain concepts is not sufficient to ensure that a child has understood the procedure it is engaged in.

In the Survey, 35.29 per cent of respondents stated they always dealt with clients who did not speak the same language as them, which demonstrates that lawyers cannot be expected to reliably facilitate translation.²⁰⁴

Other challenges that the Survey highlighted are:

- a significant proportion of legal professionals and other support workers do not speak the language used in courts;
- the existence or availability of interpretation services is not well understood; and
- there are limited interpretation services available for minority languages.

Other institutions also observed the following challenges and limitations:

- The Child Rights International Network (**CRIN**) reports that '*children's rights as contemplated by the CRC are not directly actionable, despite the fact that the CRC has technically been part of the national law since its ratification*'.²⁰⁵
- The Hauser Global Law School Program at NYU Law reports that few laws have been translated into Tetum due to its '*basic nature*', despite Tetum being an official language.²⁰⁶ Further, that translations of laws into other non-official languages are often of '*poor quality*', citing an example where '*the word "months" in Portuguese was translated to "years" in English and therefore should be expeditiously consulted*'.²⁰⁷

3.5 A TECHNOLOGY-BASED OPPORTUNITY: DIGITAL TRANSLATION SERVICES

Tetun.org²⁰⁸ provides an example of the opportunities that could be available through digital or online translation services to support children's effective access to justice proceedings in a language they fully understand.

Tetun.org is a free of charge English-Tetum machine translation service run by volunteers,²⁰⁹ which is available both as a website and an app that can be used to translate bulk text.

In September 2021, the developers of Tetun.org reported that the application had around 10,000 active monthly users.²¹⁰ The platform has been used to translate day-to-day conversations as well as complete reports.²¹¹

The developers experienced challenges with building the translation service due to a lack of appropriate resources on which to train the translation software, namely materials translated into English and Tetum. Despite this, they have collected a corpus of materials that reflect 'standard' Tetum (i.e. that does not incorporate highly formal texts) in an attempt to reflect actual use of language, taken from sources such as the websites of UN agencies, non-governmental organizations, think tanks, and the Timor-Leste Government.

The costs to operate the platform are reported to be very low (approximately USD250 per year), although vast amounts of time have been dedicated by volunteers.²¹²

Tetun.org reports that the focus of the project is now on improving translation quality, especially for a conversational style of language.²¹³

While the service currently only provides translation between Tetum and English, the developers work with multiple languages on other projects and have acknowledged the benefits of developing further language capabilities.²¹⁴

Online translation of Tetum presents a valuable, if ad hoc, solution for people trying to communicate with a child in a language they fully understand in relation to justice proceedings.

Children who only speak minority or indigenous languages in Timor-Leste are not particularly assisted by this development. However, this translation technology appears to be a cost-effective and positive step towards broadening access to justice.



4 Conclusion and Recommendations

4.1 CONCLUSION

Children's rights to effectively participate in justice proceedings in a language they fully understand is an area in need of greater research. Studies that measure the number of children in contact with the justice system, or participating in justice proceedings, are rare across the Region. The dearth of studies that measure how frequently children from linguistic minorities and indigenous groups in the Region secure access to free of charge interpreter assistance is especially acute.

A variety of international legal instruments establish children's rights to access free of charge interpreter services to effectively participate in justice proceedings in a language they fully understand. Such rights are most clearly evident in the ICCPR, CRC and via the equality of arms principle.²¹⁵ Appendix 1 provides a visual summary of rights available under core international instruments.

Treaty rights enshrining children's right to free of charge interpreter assistance are most clearly available in respect of criminal proceedings.²¹⁶ As discussed in this Report, such rights have been interpreted to apply through all stages of the criminal process and arguably extend to the translation of written documents, since any less would deny a child's right to effectively participate in proceedings.²¹⁷

In respect of non-criminal proceedings, the Committee expects State parties to adopt measures to ensure that free of charge interpreter services are provided in any judicial proceedings affecting indigenous children.²¹⁸ The position is less clear for other children, albeit the equality of arms principle supports access to free of charge interpreter assistance in *any* justice proceedings for indigent persons who otherwise cannot participate in justice proceedings on equal terms.²¹⁹ Further, the CRC principle of the 'best interests of the child' arguably requires the provision of all information in justice proceedings concerning a child to be provided in a language that child can understand.²²⁰ Children with disabilities are also afforded specific rights to procedural and age-appropriate assistance to facilitate their role in all legal proceedings, which on an ordinary reading indicates that language support services should be available to a child who does not understand the language of proceedings.²²¹

Despite international obligations and national laws requiring free of charge interpreter assistance for children to effectively participate in justice proceedings in a language they fully understand, the case study of Timor-Leste demonstrates how such laws are not always implemented in practice.²²²

Technology-based solutions may provide cost-effective means to bridge that gap and improve

access to justice for children from linguistic minorities and indigenous groups. The case studies in Appendix 3 outline a variety of technology-based solutions employed around the world to address the issue of access to justice for persons from linguistic minorities, ranging from:

- a. Audio-based initiatives, such as national interpreting services available by telephone, hotlines offering free of charge legal advice in a variety of local languages, online dissemination of multilingual information by audio recordings, and community legal education by television and radio;
- b. SMS initiatives, such as providing legal information by SMS in a variety of languages;
- c. Web-based initiatives, such as translating legal judgments via machine translation and circulating key information online and via social media platforms in minority languages;
- d. Video conferencing initiatives, including to connect linguistic minorities to interpreters and assist in capacity building and sharing information (for example, the creation of legal interpretation networks); and
- e. Online legal services, such as portals to access legal assistance in minority languages.

Other technology-based solutions may be available on a localized basis. As demonstrated in the case study of Timor-Leste, digital translation services have been advanced by a civil society organization for targeted local languages,²²³ while members of the legal profession have indicated their interest in using digital translation services as part of their work in courts, tribunals or other justice mechanisms.²²⁴

4.2 RECOMMENDATIONS

The following recommendations are informed by the analysis set out in this Report, including Appendix 2 (recommendations from inter-governmental organizations relevant to addressing children's right to effectively participate in justice proceedings in a language they fully understand) and Appendix 3 (case studies of technology-based solutions).²²⁵

a) Recommendations for children

1. Learn about your legal system and your rights, including when you are entitled to have legal and interpreter assistance to understand what is happening in justice proceedings.

b) Recommendations for civil society organizations

1. Organizations with legal expertise can share child-friendly information in local languages on children's rights in justice proceedings, including rights to free of charge translation services. Such information can be shared in online formats, such as newsletters, videos or infographics on social media platforms.
2. Educate and train children, young people and their caregivers on children's legal rights, including the right to free of charge translation services if they do not fully understand the language used in justice proceedings.
3. Support children from linguistic minorities and indigenous groups involved in justice proceedings and advocate for translation support throughout proceedings, including pre-trial processes and detention.

4. Organizations that work with children and engage with the justice system can employ staff who speak local minority and indigenous languages, where appropriate, to support the availability of ad hoc translators.
5. Support capacity-building projects to develop legal vocabulary in local minority and indigenous languages to ensure such languages are fit for use in justice proceedings. Examples include projects to develop legal dictionaries in minority and indigenous languages, publishing legal materials in those languages, and using such languages in legal education and training.

c) Recommendations for lawyers

1. Understand the scope of children's rights to free of charge interpreter services across justice proceedings in the respective jurisdiction and inform clients of such rights.
2. Raise awareness through professional associations, such as bar associations, of children's rights to effectively participate in justice proceedings in a language they fully understand, including through free of charge interpreter assistance.
3. Advocate for the enforcement of relevant national and international laws that provide for children's right to free of charge interpretation services in the respective jurisdiction.
4. Collaborate on capacity-building projects to develop legal vocabulary in local minority and indigenous languages to ensure their use in justice proceedings. Examples include projects to develop legal dictionaries in minority and indigenous languages, publishing legal materials in those languages, and using such languages in legal education and training.

d) Recommendations for inter-governmental and international organizations

1. Organize local, national and regional education and awareness-raising campaigns on children's rights to participate in justice proceedings in a language they fully understand.
2. Develop practical guidance to inform and assist States, on how to realize children's rights to effectively participate in justice proceedings, including through free of charge access to interpretation services.
3. Monitor and report publicly on the use of language in justice proceedings and the availability of free of charge interpreter services across the Region. This includes developing clear criteria and standards for monitoring the availability of interpreter services and progress.
4. Conduct field research and studies on how the availability of free of charge interpreter services for children from linguistic minorities and indigenous groups involved in justice proceedings impacts children's access to justice across the Region.
5. Partner with civil society organizations (for example, Tetun.org in Timor-Leste) to develop digital and other technology-based solutions to facilitate translation.
6. Engage with 'tech' companies to identify machine translation services or other

digital technology-based solutions to support the translation of minority and indigenous languages into official languages used across the Region.

7. Convene States in regional forums to assess regional implementation of children's rights to effectively participate in justice proceedings in a language they fully understand. Use such forums to identify forms of regional collaboration, such as capacity-building projects, sharing regional best practice, awareness raising-campaigns across judicial and related fora as well as developing regional pools of translators.

e) Recommendations for States

1. Ensure implementation and enforcement of existing national laws that require access to free of charge interpreter services where a child does not fully understand the language used in justice proceedings.
2. Publish official translations of laws, especially legal instruments concerning children's rights and access to justice, in local minority and indigenous languages. Ensure that draft laws (including laws distributed for consultation) are also translated into such languages.
3. Disseminate child-friendly guidance on children's rights to effectively participate in justice proceedings in a language they fully understand (including when free of charge interpreter services are available), to children of all backgrounds in languages and formats accessible to them (including digital formats). Ensure such guidance is readily available in all courts, mobile courts and related fora in which children may engage with justice proceedings.
4. Develop practical guidance to train justice system professionals on their role to implement and champion children's rights to effectively participate in justice proceedings in a language they fully understand. Such guidance or training should include when free of charge interpretation services are to be provided and how to engage with child participants in justice proceedings. Disseminate such guidance to relevant stakeholders such as judges, prosecutors, lawyers, police and support staff in courts and related fora.
5. Ensure that online court services are available in local minority and indigenous languages, including court forms, details regarding access to interpreter services, and key practicalities (such as location and opening hours).
6. Require courts to record and publicly report on the languages used by participants of justice proceedings and when free of charge interpretation services are provided.
7. Support educational institutions to develop and offer programmes that train interpreters to translate legal concepts into local minority or indigenous languages in a child-friendly manner.
8. Develop career pathways (for example, by subsidizing training fees or funding employment) for certified translators of minority and indigenous languages to work within the justice system, including in courts, police stations and detention centres.

9. Establish a State-supported centre and register of qualified interpreters for local indigenous and minority languages.
10. Allocate resources to fund access to technology-based solutions, such as:
 - Telephone or video conference translation services for local minority and indigenous languages. For example, a national interpreting service that provides access to interpreters by telephone²²⁶
 - Social media accounts to disseminate child-friendly guidance in local languages on children's rights to effectively participate in justice proceedings in a language they fully understand (including when free of charge interpreter services are available)
 - Translating judgments into local minority and indigenous languages through machine translation, where available²²⁷
 - Telephone hotlines providing free of charge legal advice to children, young people and their caregivers in local minority and indigenous languages²²⁸
 - Television, radio and online programmes delivered in local minority and indigenous languages on children's rights in justice proceedings.
11. Engage with 'tech' companies to identify machine translation services or other digital technology-based solutions to support the translation of minority and indigenous languages into official languages of the State.
12. Ensure there are effective remedies for participants in justice proceedings who do not fully understand the language used. For example, a complaints system regarding the availability of interpretation services, and legal grounds to challenge decisions affected by the lack of interpretation or translation of insufficient quality.
13. Establish legal standards and obligations for justice proceedings to be conducted in minority or indigenous languages, where appropriate. For example, where a number of participants speak that language, or where that language is requested by a child defendant.
14. Where appropriate, establish appointment criteria for judges, public defenders, court, police and other personnel within the justice system to be proficient in minority and indigenous languages.



APPENDIX 1

SUMMARY OF RIGHTS AVAILABLE UNDER KEY INTERNATIONAL INSTRUMENTS

	General Protections					Specific Protections	
	Non-discrimination on the basis of language	Equality before the law/ equal protection by law	Entitlement to fair/public hearing	Guarantees for defence	Right to be informed in a language you understand	Right to free of charge interpreter assistance	
ICCPR	● Art 2	● Art 14 (1)	● Art 14(1)	● Art 14(3) (criminal proceedings)	● Art 14(3)(a) (criminal proceedings)	● Art 14(3)(f) (criminal proceedings)	● Art 14(1) - GC32 Art 14(3)(b) - GC32
CRC	● Art 2(1)	●	● Art 40(2)(b)(iii) (criminal proceedings)	● Art 40(2)(b)(ii) (criminal proceedings)	● Art 3(1) - GC14 Art 40(2)(b)(ii) - GC24	● Art 40(2)(b)(vi) (penal law offences)	●
CRPD	● Art 5 (non-discrimination including on the basis of disability)	● Art 12	● Art 13 (effective access to justice on equal basis with others)	●	● Art 12(2) - GC12	● Art 3(1) - GC14 Art 40(2)(b)(iv) - GC24 (criminal proceedings)	● Art 12(2) - GC11 (indigenous children)
UDHR	● Art 2	● Art 7	● Art 10	● Art 11	●	● Art 13(1) (right to procedural and age-appropriate accommodations)	●
UNDRIP	● Art 2 (non-discrimination including on the basis of origin/identity)	● Art 2	●	●	●	● Art 13(2)	●
ASEAN HRD	● Art 2	● Art 3	● Art 20(1)	● Art 10 (affirms UDHR)	●	●	●

Key

- Rights expressly available in the text of the instrument
- Rights partially available, or interpreted as available by treaty body
- No rights available

■ Treaty (legally binding on parties)

■ Declaration (non-binding commitment by parties)

APPENDIX 2

RECOMMENDATIONS FROM INTER-GOVERNMENTAL BODIES

Recommendation	Commentary
<p>Provide educational opportunities to develop the skills and knowledge that will bridge language gaps.</p> <p>Examples include education courses and diplomas in translation and interpreting between the dominant language and minority languages.</p>	<p>Capacity-building and broader institutional change</p> <p><u>UNDP</u>²²⁹</p> <ul style="list-style-type: none"> The UNDP emphasises the need for human resources planning and to continually recruit and train translators and interpreters in minority languages.²³⁰ However, for this to be possible, there must be educational and training programmes available in the languages concerned. <p><u>UN Special Rapporteur on Minority Issues</u>²³¹</p> <ul style="list-style-type: none"> 'In South Africa, the Department of Justice in collaboration with four universities has established a University Diploma in Legal Translation and Interpreting to improve the quality of service offered'.²³²
<p>Establish a State-supported centre and register of appropriately qualified translators and interpreters.</p>	<p><u>Human Rights Council</u>²³³</p> <ul style="list-style-type: none"> 'Article 12 of the Convention on the Rights of the Child upholds the right of children to be heard in judicial and administrative proceedings that affect them. In the case of indigenous children, measures to fulfil the right to be heard in judicial or criminal proceedings include providing an interpreter free of charge and guaranteeing legal assistance in a culturally sensitive manner. In Guatemala, the judiciary established the Centre for Indigenous Translation and Interpretation with the purpose of facilitating access to justice for indigenous peoples, and, in particular, indigenous women and children. The centre has legal translators and interpreters, with national coverage and expertise in the 22 Mayan languages spoken in the country.'²³⁴ [53]

Recommendation	Commentary
<p>Develop minority languages as legal languages with sufficient legal vocabulary.</p> <p>Examples include creating law dictionaries in minority and indigenous languages, publishing materials in those languages, and using such languages in legal education and training. This would support such languages to convey legal concepts and adapt as languages of legislation and the courts.</p>	<p>UNDP²³⁵</p> <ul style="list-style-type: none"> • 'The evaluation team strongly recommends, at a minimum, greater use of Tetum in legal training and in publication of legal materials. Full support should be given to ongoing development of Tetum as a legal language (building on the progress already made), and to addressing the shortage of Portuguese/Tetum translators'.²³⁶ • 'Greater support to ensure that draft laws presented in Parliament or distributed for consultation are translated into Tetum so as to ensure full engagement and democratic debate in the legislative process'.²³⁷ • 'A law dictionary in Tetum should be published without delay, to facilitate the production of legal materials/manuals in Tetum'.²³⁸ • Training programmes should use languages other than the dominant language, to promote their use and development as legal languages. For example, in respect of the Legal Training Centre in Timor-Leste, 'Trainees/graduates argued strongly that the use of Tetum in the training programme (and, if necessary, Bahasa Indonesia) should be expanded to ensure full understanding of legal concepts'.²³⁹ <p>Organization for Security and Co-operation in Europe²⁴⁰</p> <ul style="list-style-type: none"> • 'Particular attention should be paid to making laws available in minority languages and to developing legal terminology in minority languages consistent with relevant national laws to facilitate the use of these languages in proceedings'.²⁴¹

Recommendation	Commentary
<p>Use minority and indigenous languages not just in trials, but also across pre-trial components of the legal system. For example, this includes use of minority and indigenous languages across law enforcement bodies, investigatory processes, detention, communications with the courts and administrative bodies, and websites and documents to obtain information or file legal complaints.</p>	<p>Codifying reforms to increase the use of minority and indigenous languages across justice systems</p> <p>Organization for Security and Co-operation in Europe²⁴²</p> <ul style="list-style-type: none"> • 'Legal services, which should be provided in a language they understand and preferably in their language, include free legal aid but also other forms of assistance, such as access to court liaison offices to support isolated minority communities, mobile courts, on-line court services, legal education, access to legal information and other services that national human rights institutions may provide.'²⁴³ • 'In addition to ensuring that persons belonging to minority communities can use their language in proceedings, from a practical point of view, minorities should also be able to speak their language in administrative procedures and in communications with courts and national human rights bodies. Their language should be spoken by staff and displayed on signage in buildings alongside majority languages. Forms, information about the institution, legal aid services and other practicalities (such as opening hours) should be made available in minority languages on-site and, where relevant, online.'²⁴⁴ • In respect of law enforcement bodies such as the police: 'where relevant, effective communication with minorities requires the recruitment of persons belonging to minority communities or of interpreters who speak a language they understand, and preferably their language. Protocols and methods to engage with minority communities need to be established as well, such as the use of leaflets, broadcasts in the media and posts on social media to communicate information in a language they understand and preferably in minority languages.'²⁴⁵
	<p>Human Rights Council, Report of the Independent Expert on Minority Issues²⁴⁶</p> <ul style="list-style-type: none"> • 'Minorities have reported being denied the opportunity to be assisted, free of charge, by a translator or interpreter where they do not understand or speak the language of the tribunal or court. In practice, solutions include employment of those proficient in minority languages in relevant positions, such as specialist liaison staff for minority communities. Positive practices have been employed by police services in some countries, including community policing methodologies that promote the recruitment of minority officers who speak minority languages and their deployment in minority localities.'²⁴⁷

Recommendation	Commentary
<p>Appoint judges, prosecutors, public defenders, court and other personnel across the justice system who have proficiency in minority languages. For example, this proficiency could be a criterion for their appointment.</p>	<p>UNDP²⁴⁸</p> <ul style="list-style-type: none"> • ‘Statutorily prescribed qualifications for appointment of judges, prosecutors, and public defenders must be respected. These include a standard of proficiency in the two official languages in Timor-Leste, Portuguese and Tetum. Bahasa Indonesia could be a “working language”, since many people use this language, and some of the laws still in force in Timor-Leste are in this language.’²⁴⁹
<p>Establish legal obligations to assess if appropriate to conduct proceedings in another language. For example, for a judge or other court official to verify the linguistic abilities of an accused or suspect and assess if appropriate to conduct the proceedings in a minority or indigenous language.</p>	<p>UN Special Rapporteur on Minority Issues²⁵⁰</p> <ul style="list-style-type: none"> • ‘Legally obliging the presiding judge or other court official to verify the linguistic abilities of an accused or suspect if it appears there may be comprehension issues on the basis of language.’²⁵¹
<p>Provide for legal proceedings to be conducted in minority or indigenous languages where appropriate. For example, by taking into account factors such as the number of speakers. Oral proceedings should be conducted in those minority languages and documents (particularly judgments) should be translated to and explained in those languages.</p>	<p>UN Special Rapporteur on Minority Issues²⁵²</p> <ul style="list-style-type: none"> • ‘In application of the proportionality principle, where it is practicable due to the concentration or number of speakers of a minority language, a number of states make legal provision for the use of minority languages in court proceedings, at least at lower levels, including the right to be heard and understood by a judge who understands that language.’²⁵³ • ‘In Canada, a circuit court handling criminal and some social services matters conducts hearings entirely or partially in the Indigenous Cree language in Saskatchewan. Proceedings must also be in other languages, such as Inuktitut and French, in certain other areas because of the size of these linguistic communities.’²⁵⁴

Recommendation	Commentary
<p>Establish legal grounds to challenge decisions affected by the lack of interpretation or translation of a sufficient quality. For example, a right to challenge a decision that there is no need for interpretation, and a right to claim that the quality of the interpretation was insufficient to safeguard the fairness of the proceedings.</p>	<p>UN Special Rapporteur on Minority Issues²⁵⁵</p> <ul style="list-style-type: none"> • 'Positive and successful efforts by different states to ensure that these linguistic rights are fully safeguarded include ...providing a right to challenge a decision or a finding that there is no need for translation; or, when a translation has been provided, the ability to complain that the quality of the translation is insufficient to safeguard the fairness of the proceedings'.²⁵⁶ <p>Council of the European Union, Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings</p> <ul style="list-style-type: none"> • Article 2(5) states: 'Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.' • Article 2(8) states: 'Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.'
Innovation	
<p>Use communications technology, such as video conferencing, telephones or the internet to link interpreters to court proceedings, while maintaining the fairness of the proceedings.</p>	<p>UN Special Rapporteur on Minority Issues²⁵⁷</p> <ul style="list-style-type: none"> • 'In India, new communications technology such as video conferencing has been used in recent years to link interpreters to court proceedings'.²⁵⁸
Providing information/raising awareness	
<p>Ensure litigants, and especially accused or suspects, are informed of their rights to free of charge translation or interpretation.</p>	<p>UN Special Rapporteur on Minority Issues²⁵⁹</p> <ul style="list-style-type: none"> • 'Among the recommended good practices for all European Union member states is the provision of information pamphlets, posters or other visible means in all courtrooms and police stations in the most widely used languages of a district to inform any accused or suspect of his or her right to free translation or interpretation, as well as the setting up of a register of translators and interpreters who are appropriately qualified'.²⁶⁰

APPENDIX 3

CASE STUDIES: TECHNOLOGY-BASED SOLUTIONS

Model	Case studies	Required level of internet connectivity
<p>SMS initiatives</p> <p>Providing information by SMS to improve access to justice</p>	<p>South Africa: SMS-based initiatives have been used to provide information relating to the Children's Rights Act and Domestic Violence Act regarding how victims may be able to avail themselves of their rights under this legislation, gender equality under the Constitution and how people can access legal support.²⁶¹</p> <p>However, commentators note that many indigenous and minority languages are spoken but not written,²⁶² so there are limitations to this method of disseminating information. This model could be supplemented by audio-based initiatives using such indigenous and minority languages.</p>	<p>Low. Mobile phone connectivity required.</p>
<p>Audio-based initiatives</p>		
<p>Hotlines for free of charge legal advice</p>	<p>Bolivia, Indonesia, Kenya, Uganda: In these countries, telephone hotlines have been created to support non-State dispute resolution mechanisms.²⁶³ This has been of assistance particularly where the indigenous language or minority language in question is spoken but not written.²⁶⁴</p>	<p>Low. Telephone connectivity required.</p>
<p>Audio interpreter hotlines</p>	<p>Australia: Australia's Translating and Interpreting Service is a national interpreting service that provides access to interpreters over the phone, allowing various agencies and businesses to communicate with non-English speaking persons. The majority of these services are free for non-English speakers.²⁶⁵</p> <p>Canada: Phone-based technologies have been used to procure interpreter services where they might otherwise be unavailable (for example, from outside the country). However, concerns have been noted regarding the quality of interpretation given the possibility that the interpreter may lack adequate contextual background.²⁶⁶</p>	<p>Low. Telephone connectivity required.</p>

Model	Case studies	Required level of internet connectivity
Online dissemination of multilingual information by audio recordings	<p>Canada: Information on important legal topics has been made available online in text and audio format in Arabic, Chinese (simplified Chinese and Mandarin), Somali, Spanish, Tamil, and Urdu²⁶⁷.</p>	<p>Audio recordings disseminated online require a high level of internet connectivity. Alternatives may include radio, television and distribution of recordings on compact discs or cassette tapes.</p>
Community legal education by television and radio	<p>Cambodia: UNDP's Access to Justice programme in Cambodia organized combined media (television and radio) talk shows in a Community Legal Education Centre. Between 2007 and 2010 there were four television shows and 18 radio shows. Topics included land rights, legal support available to indigenous peoples, and national and international legal instruments supporting indigenous peoples' rights.²⁶⁸</p> <p>Commentators note that in countries such as Timor-Leste, 'people's awareness of rights and the law primarily came through TV and radio'.²⁶⁹</p>	<p>Low. Television and radio connectivity required.</p>

Model	Case studies	Required level of internet connectivity
Web-based initiatives		
Translation of important information into minority languages and provision of that information in a variety of formats	<p>An example is how various countries have provided information, in minority languages, on the COVID-19 pandemic.</p> <p>Australia: Platforms such as SBS News and SBS Radio, as well as the social media outlets of NSW Health, provided information on the pandemic in various minority languages.</p> <p>Canada: In relation to ensuring access to justice for ethnic minority groups amid the pandemic, the International Organization for Migration (IOM) and Organisation for Economic Co-operation and Development (OECD) noted that Canada's health ministry translated information on the pandemic into 10 indigenous languages and committed approximately \$1.7 billion to support Indigenous and northern communities and organizations.²⁷⁰</p>	High for online dissemination. Radio and television connectivity required.
Translating judgments into more languages via machine translation	India: <i>Justice Madan Lokur notes that a particular 'use of technology by the Supreme Court to benefit litigants is in translating its judgments into nine Indian languages. This has been made possible through machine learning and about 200 judgments have been so translated since last November. The plan is to increase the number of judgments and the languages in which they will be available. This is in line with the overall access to justice programme of the Indian judiciary.'</i> ²⁷¹	High, depending on the nature of the technology used for translation.
Video conferencing initiatives		
Video conferencing to assist in capacity building	Video conferencing assists in capacity building. For example, it can help with the creation of legal interpretation networks for information sharing, be used to train individuals and assist with quality assurance. ²⁷²	High. Video conferencing will necessitate strong internet connectivity.

Model	Case studies	Required level of internet connectivity
Video conferencing to connect minority groups with interpreters	<p>Video-link and phone-based technology are particularly salient as the COVID-19 pandemic has normalized technologies such as Zoom and Microsoft Teams.</p> <p>Commentators note that 'video conferencing can provide improved access to interpreters for members of linguistic minority groups, as well as low-cost access to legal services and lawyers, which may be especially important for those living in or incarcerated in remote locations.'²⁷³</p> <p>Canada: <i>'Some commercial interpreter services are beginning to offer interpretation by video conferencing, which better approximates in-person service and is essential for sign language interpretation. The Canadian Hearing Society has video conferencing technology in each of its 26 offices. Increasing the use of video conferencing appears to be a key strategy in helping to address sign language interpreter capacity, particularly in rural and northern communities.'</i>²⁷⁴</p>	High. Video conferencing will necessitate strong internet connectivity.
Online legal portals		
Online specialist legal services	United States: The LawHelp portal provides assistance (for example, in relation to applying for legal and pro bono assistance, contacting the court, and receiving procedural information) in Spanish. ²⁷⁵ LawHelp also has bilingual volunteers to provide assistance to Spanish-speaking users. ²⁷⁶	High, depending on whether implemented online or by telephone.

APPENDIX 4

THE IMPACT OF LANGUAGE BARRIERS ACROSS JUSTICE SYSTEM ACTORS

Access to justice can be undermined when actors within a justice system do not fully understand the dominant language used. Actors in legislative and judicial systems without adequate language skills can, at each and every stage, impede access to justice for the people subject to that system, including as follows:



Lawmakers and the language of legislation: there are risks of inaccuracy or ambiguity in the law where lawmakers are not proficient in the language in which the law is drafted.²⁷⁷ If the law is only available in one language, groups unfamiliar with that language will be obstructed from understanding the law and effectively participating in legal processes. Where laws are drafted in one language and translated into another, nuanced issues can arise for the interpretation of law if there is any discrepancy.²⁷⁸ Not all languages are equipped to describe and comprehend legal concepts in the same way, which can be a product of culture as well as language.²⁷⁹



Lawyers and the language of advocacy: if a lawyer does not fully understand the language of the court, then their ability to advocate for a client may be impeded. This has implications for a person's right to a defence and fair trial rights. Similar issues arise if a lawyer does not fully understand the language used by its client, which can impede taking client instructions, communicating advice, and representing the client effectively.



Judges and the language of courts: language can strike at the core of a dispute, as its interpretation may be the foundation of an argument. If the dominant language of a court requires a judicial decision-maker to operate in a language not fully understood, it may impact how that decision-maker understands nuanced legal arguments and interprets the law.



Court officers and the language of procedure: the administration of justice can be undermined where court officers do not fully understand the dominant language of the court, given their role in instructing jurors, calling upon witnesses, and facilitating legal procedure.



Individuals and a language that they understand: there are few opportunities for a person to effectively access justice if they cannot understand their rights because the law, or the procedures of legal institutions, is only available in a language it does not understand. For example, a person cannot mount an appropriate or robust defence if it does not understand the charges against it. Even the use of an interpreter may be disadvantageous, by impacting how an accused person or witness is perceived by a decision-maker when giving testimony.

Any of the above-mentioned language barriers undermine access to justice, reduce transparency and public confidence in the legal system, and limit the effective expression of children's rights.

ENDNOTES

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- 29 Similar to the access to justice programme of the Indian judiciary. See Appendix 3.
- 30 Similar to services offered in Bolivia, Indonesia, Kenya and Uganda. See Appendix 3.
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- 57 John Tobin and Cate Read, 'Art.40 The Rights of the Child in the Juvenile Justice System' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford Commentaries on International Law, 2019), 1641.
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- 61 *T v UK*, para 82; *V v UK*, para 84; John Tobin and Cate Read, 'Art.40 The Rights of the Child in the Juvenile Justice System' in John Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford Commentaries on International Law, 2019), 1633.
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- 119 GC12, para 58.
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- 221 See para 2.2(c) of this Report.
- 222 See part 3 of this Report.
- 223 See part 3.5 of this Report.
- 224 See para 102 of this Report. Almost all respondents to the Survey (94 per cent) indicated their interest in using digital translation services as part of their work in courts, tribunals or other justice mechanisms.
- 225 Appendix 2 summarizes relevant recommendations from inter-governmental organizations on the topic of language constituting a barrier to justice for linguistic minorities and indigenous groups. Appendix 3 outlines case studies of technology-based solutions identified as relevant to the focus of this Report.
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- 228 Similar to services offered in Bolivia, Indonesia, Kenya and Uganda. See Appendix 3.
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- 277 For example, in Timor-Leste, legislation is primarily drafted in Portuguese, albeit not all legislative representatives are proficient in Portuguese.
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- 279 For example, while Tetum is a national language in Timor-Leste, it has not historically been used in the development of the law and judicial system, which is largely based on that of Portugal's. Consequently, complications can arise when trying to translate Portuguese legal concepts into Tetum. The influence of culture in understanding legal concepts is also illustrated by Australia, where coloniser concepts of property and land ownership differed significantly from the indigenous approach.



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